John E. Haeussler—for Government—Direct

The Clerk: Court's Exhibit 1, minutes of the Grand Jury.

The Court: Incidentally, the record may show that although these were not sealed the other day when they were first used, the Court has examined them this morning and finds that they are in exactly the same condition as they were when the Court looked at them the other day.

Mr. Fennelly: And for the clarity of the record, these are the Grand Jury minutes upon which this indictment was predicated.

The Court: Yes, Mr. Clerk, you will hold those.

JOHN E. HAEUSSLER, called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination by Mr. Seymour:

(273) Q. Mr. Haeussler, where do you live? A. At 263 Foster Avenue, Malverne, Long Island.

Q. What is your occupation, sir? A. I am chief clerk at the 30 Broad Street office of the Chemical Bank and Trust Company.

Q. Prior to your employment by Chemical, by whom were you employed? A. Continental Bank and Trust Company, at the same office, 30 Broad Street.

Q. How long have you been employed by these banks? A. I have been employed with the Chemical Bank for the past six years, and prior to that I was employed by the Continental Bank for 15 years.

Q. Are you familiar with the books and records of the old Continental Bank? A. I am.

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Mr. Seymour: Would you mark this, please?

(Marked Government's Exhibit 82 for identification.)

Mr. Seymour: Would you mark these three as a group?

(Marked Government's Exhibit 83 for identification.)

Mr. Seymour: Would you mark these as a group?

(Marked Government's Exhibit 84 for identification.)

Q. Now, Mr. Haeussler, I hand you Government's (274) Exhibit 82 for identification. Can you tell what that is? A. This is an original signature card of the Continental Bank and Trust Company of an account which was maintained with that bank under the name of Frank Costello, Special, Charity Drives Account.

Q. Does that card show an authorized signature? A. Yes, it does.

Q. In whose name, sir? A. Signed by Frank Costello.

Q. Mr. Haeussler, I hand you Government's Exhibit 83 for identification consisting of 3 sheets. Can you tell us, please, what that is? A. These are original ledger sheets of the Continental Bank and Trust Company of an account which was maintained in that bank under the name of Frank Costello, Special, Charity Drives Account. It covers a period of May 8, 1947, through April 27, 1948.

Q. Will you tell us whether the account continued under the name you just referred to throughout that period? A. It originally opened under the name Frank Costello, Special, Charity Drives Account, and on December 2, 1947,

the title was changed to Frank Costello, Special, Charity Fund Account.

Q. You said, Mr. Haeussler, that Government's Exhibit 83 for identification related to a period ending (275) April 27, 1948, I believe; is that correct? A. That is correct, yes.

Q. Can you tell us, sir, where the records would be for that account after that period? A. The records after that period are in possession of the Chemical Bank and Trust Company because the business of the Continental Bank was acquired as of May 1, 1948, was acquired by the Chemical Bank and Trust Company.

Q. Would this account have been transferred to Chemical? A. That is correct.

Q. So subsequent sheets would appear on their records? A. That is right.

Q. I hand you Government's Exhibit 84 for identification. Can you tell us what those are, sir? A. These are original deposit tickets of the Continental Bank and Trust Company on the same account, Frank Costello, Special, Charity Drives Account, from May 8, 1947, through April 26, 1948.

Q. When you say the same account, do you mean the account under both the names? A. That is correct.

Q. Do you know, Mr. Haeussler, whether these three exhibits, Government's Exhibits 82, 83 and 84 for identification, are records that were kept by Continental (276) in the regular course of business? A. That is correct.

Q. Was it the regular course of business of Continental to keep these records? A. That is right.

Mr. Seymour: At this time the Government offers in evidence Government's Exhibits 82, 83 and 84 for identification.

While counsel is examining these documents, perhaps we could make double use of the time if the

Court would permit us to circulate certain exhibits among the jurors at this time which have been received in evidence.

The Court: You may do that.

Mr. Seymour: I ask permission at this time to circulate Government's Exhibit 49, Recordak checks after March 2, 1949, on the account of Frank Costello in the Corn Exchange Bank Trust Company, all the checks being payable to Loretta B. Costello.

The Court: Yes.

(Mr. Seymour hands to jury)

(A pause)

(277) Mr. Fennelly: No objection.

(Marked Government's Exhibits 82, 83 and 84 in evidence.)

Mr. Seymour: May I wait until the jury is through examining the exhibits?

(A pause)

Mr. Seymour: May I proceed now, your Honor?

The Court: Yes.

Q. Mr. Haeussler, I hand you Government's Exhibit 82, which I believe you said was the signature card for the account you have referred to.

Can you tell us, please, there appears to be a notation on that card put on by rubber stamp, can you tell us what it is, please? A. The notation is that the account closed on December 2, 1947, that is, the Frank Costello Special Charity Drives Account.

Q. Does that coincide with the change of the name of the account that you referred to before? A. That is correct.

Q. And would there be a new signature card prepared for the account under the new name? A. That is correct.

Q. Where would that signature card be now? A. That signature card would be in the possession (278) of the Chemical Bank and Trust Company because the account went into that bank at the date of acquisition by Chemical of the business of the Continental Bank.

Q. Looking at Government's Exhibit 83, Mr. Haeussler, can you tell us what the balance was on deposit as of December 31, 1947, on either of those accounts, or both? As I understand it, the Drives account closed on December 2nd, so it would be on the Fund account A. On December 31, 1947, the balance in the Fund Account, that is, Frank Costello Special Charity Fund Account, was $215.

Q. Is it that time the Drives Account had been closed? A. That is correct.

Q. On the second sheet of Government's Exhibit 83 there are two entries in the deposit column, I believe. Can you tell us whether those are actual deposits or correcting entries reflecting the transfer to the new account? A. These appear to be correcting entries.

Q. Referring to Government's Exhibit 84, which I believe you identified as deposit tickets on those two accounts, can you tell us whether the tickets constituting that exhibit are the tickets relating to all the actual deposits made in those two accounts (279) while they were with Continental? A. That is correct.

Q. Would you please tell us from Government's Exhibit 84 the dates, amounts and form of deposits made in those accounts? A. On May 8, 1947, there is a deposit made of $5,000 in cash.

On November 25, 1947, there is a deposit in the total amount of $2,250, consisting of cash in the amount of $2,000 and a check for $250.

On January 16, 1948, there is a deposit of $2,500 in cash.

On March 15, 1948, there is a deposit of $1,000 in cash.

On April 26, 1948, a deposit of $2,000 in cash.

Q. Could you tell us what the total amounts of the deposits are reflected in those tickets for the year 1947? A. $7,250.

Q. Of that amount how much was by cash? A. $7,000.

Q. When you say "cash," are you referring to currency, that is, folding money that you put in your pocket? A. That is correct.

Q. Would you tell us, sir, the total of the deposits (280) as shown on those deposit tickets for the year 1948 up until April 27th, when it was transferred to Chemical? A. The total for the year 1948 was $5,500 in cash.

Q. All of it in cash? A. That is correct.

Q. Again you are referring to folding money, actual currency? A. That is right.

Mr. Fennelly: I didn't know there was any other kind of money.

The Court: Silver.

Mr. MacMahon: Gold.

Mr. Fennelly: That is forbidden.

Q. Now, sir, are you familiar with the records of the Continental Bank with respect to loans made by the bank to indiyiduals? A. Yes, sir, I am.

Q. Can you tell us, sir, whether the Continental records show any loan to Frank Costello or Loretta B. Costello from the years 1937 up until May 1, 1948, when these matters were transferred to Chemical? A. I have made a personal check of those records for the period mentioned and I found no record of any applications for loans or any actual loans that were put on the books for the account of Loretta B. Costello or Frank Costello.

Mr. Seymour: Would you mark this group as one exhibit?

(281) (Marked Government's Exhibit 85 for identification.)

Mr. Seymour: And this as one exhibit.

(Marked Government's Exhibits 86, 87 and 88 for identification, respectively.)

Mr. Fennelly: Your Honor, might I ask in connection with the substitution of bank statements, if we are not going to get photostats of them from the Government, if we may have an opportunity to photostat the originals ourselves because we need them to work on.

The Court: That is something you ought to be able to work out.

Mr. Seymour: I believe, your Honor, we have complied so far with every request for photostats from the defense.

Mr. MacMahon: I told Mr. Delaney last night that the Government has a great burden of work in addition to this case, and we are getting photostats made, your Honor, as quickly as we can.

Mr. Fennelly: Our problem is, because we need to work on it from day to day after it closes. We have them here.

The Court: Do you represent that you have been held up by not getting them yet?

Mr. Fennelly: Yes. Yesterday, for instance, (282) we didn't have all these. There were a great many exhibits put in yesterday, and we didn't have copies of them, and we worked on what we could until after

closing of the court, but we are handicapped without them.

The Court: Well, they represent that they are going to get them for you as soon as they can.

Mr. MacMahon: Your Honor, our problem is that with a good many of these exhibits in order to photostat them you have to take them apart.

The Court: You are talking about those certified copies?

Mr. MacMahon: No—yes, certified copies and also originals, and it is our thought that until they are in evidence in their original form, we don't like to make photostats if we can avoid it. After that, why, then we will get busy and make photostats.

The Court: All right.

Mr. MacMahon: I will be very happy—

Mr. Fennelly: As far as these bank sheets, I do not see any such problem. They are open sheets, such as these ledger accounts.

Mr. MacMahon: We need them in court at the time we use them. I am sure your H or is familiar with the problem down on the fourt- loor, with our (283) office, involved in getting photostats through there. We do all the photostating here for the Eastern District now, as well as for our own district, and there are always five or six cases going on for the United States Attorney's office. We have only two photostaters down there and they are working night and day, and we are doing the best we can, and we will continue to do that. That is all we can do.

If Mr. Fennelly—

Mr. Fennelly: Then—

Mr. MacMahon: —would like to take the original exhibits and make photostats on his own, at his own expense, and if it is all right with the Court,

that is perfectly all right with the Government, provided we have a copy left with us at that time.

Mr. Fennelly: Any they cannot do, if we might have them, when we have photostats made, so we can work on them.

The Court: Is that all right with the Government?

Do you have photostating machines down there at the bank?

The Witness: Yes, your Honor.

The Court: Maybe you can make an arrangement with the bank to get photostats.

This is a housekeeping problem that occurs in (284) every case where there are records, and you are all experienced enuough to work it out. We are going to have enough trouble here keeping track of the evidence. I think that all I need to do is make sure that there is an agreement on the part of the Government to see that you either get copies of the originals or you may make your own copies. On that I have been assured, and from now on we will go ahead with the evidence.

Mr. MacMahon: There is such an agreement.

Q. Mr. Haeussler, I hand you Government's Exhibit 85 for identification, 86 for identification, 87 for identification and 88 for identification. Taking each exhibit individually, would you please give us a general description of what the exhibits constitute? A. Exhibit 85 consists of two ledger sheets, they are the original ledger sheets, they are the original ledger sheets of Continental Bank and Trust Company, of an account maintained with that bank under the name of George Wolf, Special, covering the period April 15, 1944, through—

Q. Describe each sheet separately if you would, sir. A. Yes. Well, the second sheet is from—covers the period, the

account in the same name, George Wolf, Special, for the period March 21, 1945, through January 17, 1946.

(285) The Court: Pardon me just a minute. The first sheet was from April 15, 1944, to when?

The Witness: To June 13, 1944.

The Court: Yes. And then the next?

The Witness: And the next sheet, the second sheet, covers the period March 21, 1945 to January 17, 1946.

Attached to the first sheet are two deposit tickets, one dated April 15, 1944, in the name of George Wolf, Special, and also a ticket dated May 16, 1944, name of George Wolf, Special.

The second sheet has attached to it two deposit tickets, one dated July 27, 1945, in the name of George Wolf, Special, and also a ticket dated August 17, 1945, in the name of George Wolf, Special.

Q. Thank you, sir. Now, would you look at Government's Exhibit 86 for identification and give us the same type of description, please? A. Government Exhibit No. 86 consists of two ledger sheets of an account maintained by the Continental Bank and Trust in the name of George Wolf Special. The first sheet covers the period February 21, 1947, through August 7, 1947.

The second sheet is the account in the same name, George Wolf Special, period of September 21, 1947, (286) through October 31, 1947.

Attached to the first sheet are three deposit tickets, original deposit tickets of the Continental Bank and Trust Company.

The first one is a ticket dated July 17, 1947, name of George Wolf, Special.

The second one is dated July 27, 1947, name George Wolf Special.

And the third ticket is dated August 5, 1947, name of George Wolf Special.

The second sheet has attached to it two deposit tickets, original tickets of the same bank, and the name of George Wolf Special.

The first ticket is dated October 6, 1947; the second ticket is dated November 25, 1947.

Q. Thank you, sir. Now, would you look at Government's Exhibit 87 for identification and describe that, too? A. Exhibit 87 consists of one ledger sheet of an account maintained at the Continental Bank and Trust Company in the name of George Wolf, period July 1, 1943, through September 15, 1943. Attached thereon is one deposit ticket of an account George Wolf dated October 27, 1943.

Q. Finally, sir, would you look at Government's (287) Exhibit 88 for identification. A. Exhibit 88 for identification is a ledger sheet of the Continental Bank and Trust Company of an account George Wolf Special dated June 20, 1944, through February 20, 1947.

Q. Now, Mr. Haeussler, I noticed as you were describing those exhibits you appeared to be referring just to the face of the ledger sheet in order to determine the period they covered.

I believe some of those ledger sheets also have entries on the reverse side. A. That is correct. I am sorry.

Q. I don't believe it is necessary to identify them since they are part of the same exhibit. But those would be continuing entries on either side of the—one side or the other of the period shown on the face; is that correct? A. That is correct.

Q. Now, can you tell us, Mr. Haeussler, where the signature cards are relating to these two accounts, assuming that the account continued up until May 1, 1948? A. Assuming—if the assumption is correct that the accounts continued until May 1, 1948, then the signature cards con-

tinued in the records of the Chemical Bank and Trust Company.

(288) Q. Now, sir, can you tell us whether all of those exhibits, all four of them, Government's Exhibits 85, 86 and 87 are records kept by Continental Bank and Trust Company in the regular course of its business. A. That is correct.

Q. And was it the regular course of Continental's business to keep those records? A. That is right. You didn't mention 88 on that question.

Mr. Seymour: If your Honor please, to make the record doubly certain on the identification, I would like to recite the exhibit numbers once more:

Exhibit—

Mr. Fennelly: I object to the characterization of making anything doubly certain.

The Court: Go ahead.

Q. Government's Exhibit 85 for identification, 86 for identification, 87 for identification and 88 for identification, Mr. Haeussler, I understand now, is this correct: These are all books and records of the Continental Bank and Trust Company? A. That is correct.

Q. They are books and records kept in the regular course of business; is that correct? A. That is correct.

(289) Q. And it was the regular course of business of Continental to keep these records? A. That is right.

The Clerk: Off the record, is that name Wolf, W-o-l-f—

The Court: Do you mind—just a minute—not letting us have anything off the record.

The Clerk: Excuse me, Judge, I just wanted to get the name right.

The Court: All right. But let us have no diffi-

culty about something being off the record. There is a trial being had and the jury is in the box and nothing is said off the record, not even by the Clerk of the Court.

The Clerk: I am very sorry.

Mr. Seymour: May I respond to the Clerk's question, your Honor?

The Court: Yes, you may.

Mr. Seymour: Perhaps the witness should.

Q. Mr. Haeussler, can you tell us the actual spelling of the individual whose account is reflected in Government's Exhibit—

The Court: Look at the exhibit. That is the way to find out. There doesn't have to be any conference about it. Look at it.

(290) (Mr. Seymour hands exhibit to the clerk)

The Clerk: All right, thank you.

Mr. Seymour: I have no further questions of this witness.

The Court: Very well.

Cross Examination by Mr. Fennelly:

Q. Did your appear before the Grand Jury that returned the indictment in this case? A. No, sir.

Q. And were the records which you have identified here this morning produced by your bank before that Grand Jury, to your knowledge? A. I wouldn't know, sir.

Q. Now, that portion— I withdraw the question.

Did the Continental Bank merge into Chemical? A. Well, that is not the correct word for it. The business of the Continental Bank and Trust Company was acquired or purchased by the Chemical Bank and Trust Company.

Q. You mean they bought their assets? A. Yes, sir.

Q. And you are now employed by the Chemical Bank? A. That is correct.

Q. But the records that you have brought, as far as (291) the Charity account, only pertain to Continental's records, is that right? A. That is right.

Mr. Fennelly: Could I have Exhibits 83 and 4?

The Court: In the discussion that we had a minute ago, I didn't know—I didn't hear whether you objected to the admission of these records or not.

Mr. Seymour: There was no offer with respect to 85 through 88, your Honor, at this time.

The Court: Oh, I see.

Mr. Fennelly: May I have those?

Mr. Seymour: If your Honor please, we submit that we do not intend to offer these records until later in the trial, when their relevancy has been established.

The Court: I see.

Mr. Fennelly: In case I wanted to cross-examine the witness with reference to them, I may then examine them?

The Court: I will let you do it whichever way you wish, Mr. Fennelly. If you wish to examine now, you may; if they are not offered, I suppose that there would be no point to your examining them. You may withhold your cross examination, and at the time they are offered the Government may bring the witness (292) back.

Mr. Seymour: Yes, sir.

Mr. Fennelly: Thank you, sir.

The Court: I thought you had offered them.

Q. Now, did the Continental Bank and Trust Company have a Recordak system of photographing checks drawn on that account, Exhibit 83?

The Court: Pardon me just a minute. I am confused now, Mr. Fennelly. I understood that you were going to withhold your examination—

Mr. Fennelly: No.

The Court: —until the exhibits were actually offered.

Mr. Fennelly: This is in evidence, is it not?

Mr. Seymour: Yes. These relate to the Charity Account of Frank Costello.

The Court: I am sorry.

Mr. Fennelly: This is the Charity Account. The other exhibits—

The Court: These are the names in the account of the defendant, the Charity Account.

Mr. Fennelly: That is right.

The Court: Very well. Go ahead.

A. In connection with that question, to the best (293) of my knowledge and belief, they did.

Q. And the Chemical Bank would have those photostats of the checks drawn in that account? A. Those films may be in the possession of the Continental Bank, because those checks were paid prior to the acquisition of the business of the Continental Bank.

Q. And those checks, the photographs would show to whom the checks were drawn in that account, wouldn't they? A. They would.

Q. Now, can you tell from looking at that record whether there was a thousand dollars drawn on May 8th, 1947? A. There is a check paid on May 16, 1947, for $1,000, if that is the item you have reference to.

Q. Is there a date of May 16th opposite the withdrawal of $1,000 from that account? A. It operates this way: You see, the date appears in this column here (indicating), and this is the thousand dollar withdrawal, and that (indicating) shows the new balance.

Q. Excuse me just a minute so the jury will understand your explanation.

On the right-hand side under a column of balance you have dates, is that right? A. That is right.

(294) Q. And the withdrawals from the account are on the left-hand side? A. That is right.

Q. So that if you deduct the amount of—there are no dates alongside of the withdrawals. A. That is right.

Q. So that you have to deduct the amount of the withdrawals from the balance to find out what day it was drawn; right? A. Well, the balance shows—the date—alongside of the date is the new balance.

Q. That is right. A. After the entries have gone through the account, which in this case indicates the reduction of the previous balance of $1,000.

Q. That is right. So after a check drawn on the account cleared through your bank it would be posted on that account; right? A. That is right.

Q. Now, could you tell whether that check for $1,000 was a check drawn to the Legal Aid Society? A. I cannot tell from these records to whom the check was payable.

Q. Was there another check for $1,000 drawn on or about the same time? A. There was another check drawn on July 10th for $1,000.

Q. And could you tell whether or not that was drawn (295) to the Catholic Boys Brigade?

Mr. Seymour: If your Honor please, I submit that the witness has already stated that he couldn't tell from these records to whom the checks were made payable.

The Court: He has, but I will allow it.

A. I cannot tell from these records to whom the check is payable.

Q. Now, will you look and tell me whether on or around December 17th—

The Court: Now, Mr. Fennelly, how many more questions of this type are you going to ask? You have just looked at this exhibit and it is perfectly obvious that the only thing on it is the name of the account, name of the person in whose name the account was had, and then figures.

Mr. Fennelly: All right. May I ask the witness if he will bring—

The Court: You may do that, yes.

Q. Will you please bring, sir, the Recordaks which would show the checks drawn on that account? A. I—

Mr. Seymour: If your Honor please, I don't believe there is anything in the record to indicate that the witness has these records under his control. He said he is now employed with Chemical and has been (296) since 1940. I believe that Mr. Fennelly's request should be directed in another quarter.

Mr. Fennelly: He has testified that he thought Chemical had the records.

The Witness: No, I testified that I thought the Continental Bank had those records because they were paid—these items were paid prior to the acquisition of the business by Chemical.

Q. Isn't Continental out of business? A. They are still in liquidation.

Q. And didn't the Chemical Bank take over the records of Continental? A. Certain records, yes.

Q. Now, will you look in the Chemical Bank and see if you don't find the Recordaks which would show to whom

checks were drawn on that account? A. I shall do that, sir.

Q. Thank you, sir. A. May I ask one question? Are there any specific checks that you might be interested in?

Q. I would like all of them. A. All of them.

Mr. Seymour: If your Honor please, I think it is only fair for the witness to protect himself in his own employment to point out that there is an expense involved in having Recordak enlargements made, and I am not quite clear whether it would be the Court's (297) direction that that expense should be borne by the bank.

The Court: I never knew a bank in New York or any place else to make copies without telling you what the charge was. And there is no order of this Court directing him to produce it.

Mr. Seymour: Very good, your Honor.

The Court: Most bankers know how to protect their bank's interest. And that is not a pun either.

Mr. Fennelly: That is all.

Redirect Examination by Mr. Seymour:

Q. Mr. Haeussler, looking at Government's Exhibits 82, 83 and 84, can you tell us, for the purposes of identification, what the address is that is given for the depositors on those accounts? A. Care of George Wolf, Attorney, 30 Broad Street, New York, N. Y.

Q. On any of those records, sir, can you tell us whether the address 115 Central Park West appears? A. No, it does not.

Q. So that as far as the bank is concerned, the address for the maintenance of that account was care of George Wolf, 30 Broad Street? A. That is correct.

Mr. Fennelly: I object to that as repetitious.

(298) The Court: Well, it has been answered.

Q. Mr. Haeussler, looking at Government's Exhibit 83 I believe Mr. Fennelly asked you whether you could identify from that exhibit where certain withdrawals came from to whom the checks were payable.

Can you tell us, please, sir, can you tell us from the deposits of currency shown on the exhibits where the currency came from? A. I cannot.

Mr. Seymour: I have no further questions.

The Court: Any more?

Mr. Fennelly: No examination, your Honor.

The Court: Very well.

Mr. Fennelly: I would like the witness to let us know when he finds the Recordaks.

The Witness: May I have a photostat or some sort of a record of dates and the amounts of those items, because the Court has in its possession the original ledger sheets, and that is what we would have to have for our guide.

Mr. Seymour: To expedite Mr. Fennelly's request, your Honor, I hand at this time to the witness photostats of the ledger sheets constituting Government's Exhibit 83 so that he may identify the particular withdrawal.

(299) The Court: Well, listen, I am going to stop this right now. We are getting into a lot of side issues.

If you want the Chemical Bank or the Continental Bank to produce any documents, Mr. Fennelly, you know how to get them. This is not the way to get them. This is no part of the cross examination of what this man did at all.

Byron B. Ralston—for Government—Direct

I might as well be frank with you now. I am not going to let you, in cross examining this man with respect to these sheets that have gone in here, put in evidence in the Government's case the checks which are reflected on there. That is no part of this examination at all.

Now, I am not going to get into that question of having you produce your evidence. You know how to do it.

Mr. Fennelly: Very well, sir.

Mr. Seymour: That is all, Mr. Haeussler.

Thank you.

The Witness: Yes, thank you.

The Court: All right, call your—have you got another witness ready now?

Mr. Seymour: Yes, your Honor.

The Court: All right.

Mr. Seymour: The Government calls Bryon B. Ralston.

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(300) Byron B. Ralston, called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination by Mr. Seymour:

Q. Mr. Ralston, where do you live, sir? A. 159 Corlies Avenue, Pelham, New York.

Q. What is your occupation? A: Attorney-at-law, for the Chemical Bank and Trust Company.

Q. What is your particular title at Chemical? A. Assistant to the controller.

Q. How long have you been employed by Chemical Bank? A. 25 years last December.

Q. Are you familiar with the books and records of the Chemical Bank? A. I am.

Q. Can you tell us whether throughout the period '37 through '49 those records show any account in the names of either Frank Costello or Loretta B. Costello? A. I have made diligent search. I found one account in the name of Frank Costello.

Q. And you today produced certain records relating to that account pursuant to subpoena duces tecum? A. I have.

(Witness hands papers to counsel)

Q. Have you produced any other records, Mr. Ralston, (301) relating to this account? A. I have produced the transcripts, also, and signature card.

Mr. Seymour: May I have those two, please?

(Witness hands papers to Mr. Seymour)

Mr. Seymour: Would you mark this for identification?

(Marked Government's Exhibit 89 for identification.)

Mr. Seymour: And would you mark the individual pages in these two books for identification? Would you mark this 90-A and another page I will hand you as 90-B?

(Marked Government's Exhibit 90-A for identification.)

Mr. Seymour: Would you mark this sheet 90-B?

(Marked Government's Exhibit 90-B for identification.)

Q. Mr. Ralston, I hand you Government Exhibit 89 for identification. Would you tell us what it is, please? A. Signature card for the account of Frank Costello Special Charity Fund with the Chemical Bank and Trust Company, formerly with the Continental Bank and Trust Company of New York.

Q. The name of what bank actually appears on that (302) card? A. Continental Bank and Trust Company of New York.

Q. Can you tell us how it came to be in the possession of the Chemical Bank? A. In May of 1948 the Chemical Bank and Trust Company acquired a good many assets formerly held by the Continental Bank and Trust Company. It was in the nature of a partial consolidation.

Q. Was this account included in that transfer? A. Yes, sir.

Q. Mr. Ralston, I show you Government's Exhibit 90-A for identification and 90-B for identification and ask you if you can tell us what those are, sir. A. It is ledger record of the account of Frank Costello Special Charity Fund, care of George Wolf, 30 Broad Street, New York, New York, for the period from May 1, 1948, through July 19, 1949.

Q. When you refer to those periods you are referring to the total period covered by the two sub-exhibits 90-A and 90-B? A. That is correct.

Mr. Seymour: Would you mark this 90-C?

(Marked Government's Exhibit 90-C for identification.)

Q. Mr. Ralston, can you tell us whether Government's (303) Exhibits 89 and 90, comprising both 90-A and B for identification, are records kept by the Chemical Bank and Trust Company in the regular course of its business? A. Yes, sir, it is.

Q. And is it the regular course of the Chemical's business to keep those records? A. Yes, sir, it is.

Q. Mr. Ralston, I hand you Government's Exhibit 90-C for identification. Can you tell us what that is? A. That is a transcript of the ledger record, Government's Exhibit 90-A and 90-B.

Q. For identification? A. For identification. Which is prepared pursuant to subpoena.

Q. Was it prepared by you or under your supervision? A. Yes, sir.

Q. Have you prepared it with the original ledger sheets, 90-A and B for identification? A. Yes, sir.

Mr. Seymour: If your Honor please, at this time the Government offers Government's Exhibit 89 for identification and 90-C for identification in evidence.

If your Honor please, this witness will also be asked to identify certain other exhibits, so that I don't believe he can be finished up in a matter of a couple of minutes. Perhaps we might excuse him at (304) this time and recess for lunch.

The Court: Yes. I see he has another batch of books back there.

We will take our recess now until 2.15.

(To the jury) And, ladies and gentlemen, remember the instruction: Don't talk about the case among yourselves or with anybody else. Keep your minds completely open until all the evidence is in and the case is submitted to you, if it is, with the Court's instructions.

Two-fifteen.

(Jury retires)

(Recess until 2.15 p.m.)

(305) AFTERNOON SESSION

BYRON B. RALSTON resumed.

Mr. Seymour: There is pending before your Honor an offer of Government's Exhibits 89 for identification and 90-C for identification in evidence. Both exhibits have been shown to counsel for the defendant.

Mr. Fennelly: I have no objection. On 90-C I think it ought to be developed because there is one, as offered, item of a withdrawal of a hundred dollars, it looks about May 19 to me, and a deposit of a hundred dollars on June 30th that had been stricken out. It ought to appear on the record that the exhibit was offered that way.

The Court: Well, all right. It may be marked in evidence.

(Government's Exhibits 89 for identification and 90-C for identification received in evidence.)

Mr. Seymour: May we ask leave, your Honor, to substitute a photostat for 89 at the close of counsel's cross examination?

The Court: Yes.

Direct Examination by Mr. Seymour (Continued):

Q. Now, Mr. Ralston, I hand you Government's (306) Exhibits 89 and 90-C and I ask you, sir, first, looking at Exhibit 89, would you tell us when the account to which that signature card relates was opened? A. The account was opened in that name December 2nd, 1947.

Q. And can you tell us what the address is for the account? A. The address is Care of George Wolf, 30 Broad Street, New York City.

Q. Now looking at Government's Exhibit 90-C, would you tell us, please, what the balance on deposit was in that account as of December 31, 1948? A. The balance as of the close of business December 29th was 724—$724.30 which continued through the end of the year.

Q. Can you tell us from that exhibit when the account closed? A. The account closed July 19th, 1949.

Q. Can you tell us what the final item was closing the account? A. There was a withdrawal of $21.73.

Q. Now, Mr. Ralston, have you produced today any deposit tickets relating to this account? A. No, sir, I have not.

Q. Can you tell us where such deposit tickets are? A. We made diligent search for them and have not been able to find them. They have previously been (307) under inspection and apparently were not restored to their proper place.

Q. Has a careful search been made to try to locate them? A. Yes, sir.

Mr. Seymour: Would you mark this as one exhibit?

(Marked Government's Exhibit 91 for identification.)

Q. Mr. Ralston, I hand you Government's Exhibit 91 for identification and I ask you if you can tell us what those are? A. These are photostatic prints of deposit tickets of the Chemical Bank & Trust Company for the account of Frank Costello special charity fund.

Q. Can you tell us, sir, whether the tickets of which those are photostats relate to all the deposits shown in that account during the period from its inception with Chemical until it was closed in July 1949?

(A pause.)

Mr. Fennelly: I might suggest the witness might find it easier if he checked with the transcript which he already said was a copy, single sheet of paper.

A. Yes, sir, they are correct. The item of $100 is so far down in the binding it is not readily accessible.

Q. You have located it, however, on the transcript, Government's Exhibit 90-C, have you? A. Yes.

(308) Q. Can you tell us, Mr. Ralston, whether the deposit tickets, of which you have photostats, are records that are kept by the Chemical Bank & Trust Company in the regular course of its business? A. Yes, sir.

Q. And is it the regular course of the Chemical's business to keep such records? A. Yes, sir.

Mr. Seymour: I offer it in evidence at this time, Government's Exhibit 91 for identification.

Mr. Fennelly: No objection.

(Government's Exhibit 91 for identification received in evidence.)

Q. Mr. Ralston, I hand you Government's Exhibit 91. Would you look at that exhibit, sir, and tell us, please, the

total deposits made in the Frank Costello special charity fund account during the period that account was with Chemical Bank in 1948? A. $4,000.

Q. Can you tell us, please, the form in which those deposits were made? A. Entirely in cash.

Q. And by "cash" you refer to currency? A. Yes, sir.

Q. Also on that exhibit, Mr. Ralston, can you tell us the total amount of the deposits shown in 1949 up until the time the account was closed in July? (309.) A. 11,100.

Q. Would you double check your computation, sir?

The Court: Didn't you just tell us that the total deposits for the whole period was only 4,000?

The Witness: No, that was for '48.

The Court: Oh, I see. That was just '48.

A. 10,100 is the correct figure.

Q. $10,100 deposited in 1949 up until the closing of the account. Would you tell us, Mr. Ralston, from that exhibit, in what form was that total amount deposited made? A. All deposits were in cash.

Q. Every bit of that amount was in currency? A. Yes, sir.

Q. Now, sir, does the Chemical Bank & Trust Company have any accounts in the name of George Wolf? A. Yes, sir, it does.

Q. Have you produced today any records relating to that account or accounts? A. I have.

Q. May I have them, please? A. (Witness hands to Mr. Seymour.)

Mr. Seymour: Would you mark these separately?

(Marked Government's Exhibits 92, 93, 94, and 95-A, for identification.)

Mr. Seymour: Would you mark this page 95-B?

(Marked Government's Exhibit 95-B for (310) identification.)

Mr. Seymour: Would you mark these as 96?

(Marked Government's Exhibit 96 for identification.)

Mr. Seymour: Would you mark this 97-A.

(Marked Government's Exhibit 97-A for identification.)

Mr. Seymour: And, finally, would you mark this 97-B.

(Marked Government's Exhibit 97-B for identification.)

Mr. Seymour: Would your Honor care to see these, 97-B and 95-B?

The Court: No. I assume that the transcripts have been marked, the transcripts of the accounts shown in those bound volumes.

Mr. Seymour: Yes, your Honor.

Q. Mr. Ralston, I hand you Government's Exhibits 92 and 93 for identification. Would you tell us what those are, sir? A. These are signature cards for the accounts of George Wolf and George Wolf, Special, maintained at the Chemical Bank & Trust Company, formerly with the Continental Bank & Trust Company of New York.

Q. Which one of the exhibits relates to the George (311)

Wolf account, 92 or 93? A. 92 is for the George Wolf account, and 93 is for the George Wolf, Special.

Q. Mr. Ralston, I hand you Government's Exhibit 94 for identification and ask you if you can tell us what that is? A. Exhibit 94 for identification is a deposit to the credit of the account of George Wolf, Special, on November 5, 1948, in the sum of two hundred and nine—

Q. No, sir.

The Court: Never mind the sum.

Q. Now, would you look at Government's Exhibit 95-B for identification, please? A. Yes, sir.

Q. Will you tell us what that is? A. That is the ledger account of George Wolf, Special, for the period October 22, 1948 to December 7, 1948.

Q. And would you look at Government's Exhibit 95-A for identification, please? A. That is the transcript of the account represented by Government's Exhibit 95-B for identification.

Q. Was that transcript prepared by you or under your direction? A. Yes, sir, it was.

Q. And have you compared that transcript with the original, Government's Exhibit 95-B for identification? A. Yes, sir, I have.

(312) Q. And is it a true and accurate transcript? A. Yes, sir, it is.

Q. Mr. Ralston, I hand you Government's Exhibit 96 for identification. Can you tell us what those are, sir? A. These are deposit tickets representing deposits made to the credit of George Wolf, Special Account.

Q. Can you give us the dates, sir? A. March 25, 1949 and April 4, 1949.

Q. Mr. Ralston, I hand you Government's Exhibit 97-B for identification. Would you tell us what that is, sir? A.

Ledger account of George Wolf, Special, for the period February 7, 1949 to April 5, 1949.

Q. And would you look at Government's Exhibit 97-A for identification and tell us what that is, sir? A. It is a transcript of the Government's Exhibit 97-B, I believe it is, of account of George Wolf, Special, for the period February 7, 1949 to April 5, 1949.

Q. Was that transcript prepared under your supervision or by you? A. Yes, sir.

Q. Have you compared it with the originals in Government's Exhibit 97-B for identification? A. Yes, sir.

Q. Is it a true and accurate transcript? (313) A. Yes, sir.

Q. Now, Mr. Ralston, would you tell us, please, with respect to Government's Exhibits 92 for identification, 93 for identification, 94 for identification, 95-B for identification, 96 for identification and 97-B for identification, are all those records kept by the bank in the regular course of its business? A. Yes, sir.

Q. And is it the regular course of the bank's business to keep those records? A. Yes, sir.

Q. Mr. Ralston, are you familiar with the books and records of the Chemical Bank relating to the making of loans by the bank to individuals? A. Yes, sir.

Q. Can you tell us, sir, whether those records show any loan having been made during the years 1937 through 1949 to either Frank Costello or Loretta B. Costello? A. I have made diligent search and I found no trace of any loan to either of these parties.

Mr. Seymour: I have no further questions.

Cross Examination by Mr. Fonnelly:

Q. Did you appear and testify before the grand jury—or did you testify before the grand jury that returned this

indictment? A. No, sir. I have no recollection of appearing before it.

Q. And the records that you have produced here (314) from the Chemical Bank, to your knowledge, were they produced before the grand jury that returned this indictment? A. I have no knowledge in that respect.

Q. In the regular course of your business wouldn't you have knowledge if they had been subpoenaed, sir, before the grand jury? A. Yes, sir.

Q. To your knowledge they were not subpoenaed before the grand jury, isn't that so? A. As far as I know, no.

Mr. Fennelly: The records have been marked for identification but have not been offered, your Honor, and I would like to reserve the right of cross examination when they are offered, if I should need to cross examine Mr. Ralston.

Mr. Seymour: We will have him back here, if he desires.

The Court: Very well.

Any further questions now?

Mr. Fennelly: One other thing while you are here.

By Mr. Fennelly:

Q. Do you have Recordaks of the withdrawals on the account—

Mr. Fennelly: What is the exhibit number?

Q. (Continuing) Do you know whether or not you (315) have Recordaks at the bank for the checks withdrawn from that account? A. We should have, yes, sir.

Q. Those Recordaks would be a picture of the check showing to whom the check was payable, is that right? A. Yes, sir.

Mr. Fennelly: That is all now, sir.

The Court: Very well, you may step down.

(Witness excused.)

Mr. MacMahon: Your Honor, Amilcare Festa, please.

AMILCARE FESTA, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. MacMahon:

Q. Mr. Festa, what do you do? A. Marble contractor.

Q. Where do you live? A. At 2634 3rd Street, Astoria, Long Island.

Q. What is the name of your company? A. Premier Marble Company.

Q. What position do you hold in that company? A. President.

The Court: What is the name of the company, please?

(316) Mr. MacMahon: Premier Marble Company.

Q. What kind of business does Premier Marble Company do? A. All interior marble work for building, churches and the like, altars, pulpits for the churches, installing lobbies for building.

Q. How long have you been in that business, Mr. Festa? A. About 32 years.

Q. Do you work by yourself or do you have someone else with you? A. I have help.

Q. I beg your pardon? A. I employ men.

Q. Does your son sometimes work with you? A. Yes.

Q. Do you know Maria Costello? A. Yes.

Q. Where did she live with respect to you? A. In the block.

Q. Did you ever see the defendant Frank Costello at his mother's home? A. Saw him a couple of times.

Q. Did there come a time, Mr. Festa, when you made arrangements for the construction of a mausoleum? A. I made what? I beg your pardon?

Q. When you made some arrangements about the construction of a mausoleum? A. Well, I had one of business. Costello's nephew, he brought me some drawing, some sketches, and he told me if I could help him out to build a mausoleum.

(317) Mr. Fennelly: Excuse me. I object to this conversation with a nephew, did I understand?

The Court: That is what he said.

Mr. Fennelly: I didn't quite hear. I object to any conversation with a nephew.

The Court: Overruled. I don't think—it is preliminary, obviously.

Q. Did he give you anything? A. He gave me drawing, sketches.

Q. Did he give you anything else? A. No.

Q. What was the nephew's name? A. I think it was Jack Aloise.

Q. Did he give you a slip of paper?

The Court: What is the name?

Mr. MacMahon: Jack Aloise. A-l-o-i-s-e.

Q. Did he give you a slip of paper? A. Yes.

Q. What was on that slip of paper? A. Telephone number.

Q. Was there any name on that slip of paper? A. No, sir.

Q. What did you do after Mr. Aloise called on you with his plans for a mausoleum? A. I called up three or four people to get estimate, and I got the estimate, and that is all.

Q. Did you arrange for the signing of a contract? (318) A. Yes.

Q. Just before you entered into this contract, did you have any talk with Mr. Frank Costello? A. No, sir.

Q. Do you have your contract with you? A. Yes (handing).

Mr. MacMahon: Mark that, please.

(Marked Government's Exhibit 98 for identification.)

Q. I show you Government's Exhibit 98, Mr. Festa, and I ask you if this is the contract you entered into with respect to the construction of a mausoleum? A. Yes, sir.

Q. Where was the mausoleum to be constructed, Mr. Festa? A. It was to be constructed of granite, with columns, base and cap, and bronze door and window.

Q. Whereabouts were you going to have this mausoleum put up? A. St. Johns Cemetery.

Q. Read the contract and refresh your recollection now. A. Oh, that is St. Michael? That is St. Michael, that is right.

Q. What cemetery was it? A. St. Michael.

Q. How much were you to pay for that mausoleum, Mr. Festa? A. $18,000.

Q. Will you tell me how much was to be paid on the signing of the contract, Mr. Festa? A. $3,000.

(319) Q. Now, before paying that money, did you have any conversation with Mr. Costello? A. No.

Q. How did you get the $3,000, Mr. Festa? A. I called up.

Q. Who did you call? A. Mr. Costello, and I told him that I need $3,000 on the signing of the contract for the mausoleum.

Q. What did he say? A. He said, "All right, send you the money."

Q. Did you get the money after that? A. Yes.

Q. How did you get the money? A. In an envelope.

Q. What form? What was in the envelope? A. Well, there was thirty $100 bills.

Q. Who brought you that money? A. Some man.

Q. Now, did there come a time when you needed another payment on the mausoleum? A. Right.

Q. And what did you do about that payment? A. Called up again and told him another payment was due.

Q. What did he say? A. "All right."

Q. And what happened after you talked with him? A. I got the money.

Q. How much? A. $5,000.

Q. What form was that in? A. $100 bills, fifty $100 bills.

(320) Q. Who brought that to you? A. Somebody.

Q. Did there come a time when you needed a further payment on the mausoleum? A. Yes, another payment for three thousand—five thousand, and that was the final payment.

Q. Did you talk with Mr. Costello about that one? A. Yes.

Q. What did you say—what did he say that time? A. Final payment is due, the mausoleum is finished, and have to supply the balance of $5,615.

Q. What did he say? A. "All right."

Q. Did you get the money after that? A. Yes.

Q. How did you get the money? A. My son went and get him.

Q. What did he bring back to you? A. 56 $100 bills and $15 in small change.

Q. What did you do with the money, Mr. Festa, on these three occasions? A. I give them to Bongiovanni.

Q. Do you have a receipt? A. Yes, sir.

Q. May I see them, please? A. (Witness hands to Mr. MacMahon.)

Q. Do you have any other receipts? A. This is the final bill.

(Marked Government's Exhibits 99, 100 and 101 marked for identification.)

(321) Q. So that all told, then, Mr. Festa, how much money did Mr. Costello give, all added up? A. $13,615.

Q. That was all in currency? A. That is right.

Q. And what year was this, Mr. Festa? You may refer to your receipts to refresh your recollection if you need to. A. I beg your pardon?

Q. What year was this? A. The first one was March 12, 1949 and September 6th—July 18, 1949, and September 6, 1949.

Q. Could you describe the mausoleum? A. Yes.

Q. Would you? A. Will I describe?

Q. Yes. Tell the Court and jury what the mausoleum looked like. A. The mausoleum was made out of granite, and column with cap and base, and bronze door.

Q. Is there any name over the top of it? A. Yes, there is.

Q. What is the name over the top of it? A. Costello.

Mr. MacMahon: Mark this, please.

(Marked Government's Exhibit 102 for identification.)

Q. I show you Government's Exhibit 102 and ask you if you can tell me what that is a picture of? A. That is the one.

(322) Q. Is that the mausoleum? A. The mausoleum, yes.

Q. Now, Mr. Festa—

Mr. MacMahon: May I show this to the jury, your Honor?

The Court: Not until it is in evidence. You haven't offered it yet.

Q. Now, Mr. Festa, would you look at your contract, Government's Exhibit 98 for identification, the last page? Is that your signature? A. Yes, sir.

Q. And are these your initials on the last page? A. Yes, sir.

Q. And was this figure "3" in writing and "5"— A. Right.

Q. —put in there? A. Yes.

Q. With your initials opposite it? A. Yes, sir.

Q. Who are the other initials there? A. Hanies Bongiovanni.

Q. And did she sign that in your presence—Mr. Bongiovanni? A. Yes, sir.

Mr. MacMahon: (To the clerk) May I have those receipts?

The Clerk: All right (handing).

Q. What date did you sign this contract, Mr. Festa? A. October 19th, '48.

(323) Q. And the day you signed the contract was the first $3,000 paid? A. Yes, sir.

Q. And that is the money you got from Mr. Costello? A. Yes, sir.

Q. Now the next money you got, which was the next money here, which receipt? A. This (indicating).

Q. And what is the date of that? A. That is March 12, 1949.

Mr. MacMahon: Referring to Exhibit 99 for identification.

Q. And that is the money you got from Mr. Costello? A. Yes, sir.

Q. What is the next amount? A. July 18, 1949.

Q. And how much was that? A. $5,000.

Q. And is that the money you got from Mr. Costello? A. Yes, sir. September 6, 1949, the balance.

Q. That is the money you got from Mr. Costello? A. Yes.

Q. And that is for $5,615? A. Yes.

Mr. MacMahon: That is Exhibit 101 for identification.

At this time, your Honor, I offer Government's Exhibits 98, 99, 100, 101 and 102.

Mr. Fennelly: I object to 99 through 101, on the ground that they are incompetent as against the (324) defendant, and No. 102 that it is immaterial.

The Court: I will overrule the objection as to 99, 100 and 101, and as to 102 I sustain the objection.

(Government's Exhibits 99, 100 and 101 for identification received in evidence.)

Q. Mr. Festa, I notice that this contract, Government's Exhibit 98 for identification—

The Court: Was 98 included in that offer?

Mr. MacMahon: Yes, sir.

The Court: I didn't rule on that.

The Clerk: That was the contract, Judge.

The Court: I thought—

Mr. Fennelly: It had not been offered; had it?

Mr. MacMahon: Yes, I offered it.

The Court: I thought it was offered with the others.

Mr. Fennelly: I didn't—

The Court: I thought when you made your objection you referred only to 99, 100, 101 and 102.

Mr. Fennelly: I thought so. I wasn't looking at that, now, I was looking—

Mr. MacMahon: I offered them all.

The Court: Very well.

Mr. Fennelly: I will include that in my (325) objection, your Honor.

The Court: Overruled.

(Government's Exhibit 98 for identification received in evidence.)

Q. I notice that Government's Exhibit 98 in evidence refers to you as the owner? A. That is right.

Q. Mr. Festa, did you have any intention of building this mausoleum for yourself? A. No, sir.

Q. Did you have $18,000 for a mausoleum? A. No, sir.

Mr. Fennelly: I object to that.

The Court: Yes. And strike it out.

Mr. MacMahon: Your Honor, may I pass these exhibits to the jury?

The Court: You may, but I don't think it is necessary. It seems to me it is going to take up a little time. You have everything you need from it. But they are in evidence and you can show them to them if you wish.

Mr. MacMahon: You may cross examine.

Amilcare Festa—for Government—Cross

Cross Examination by Mr. Fennelly:

Q. Mr. Festa, you were a friend of Mr. Frank Costello's mother, were you not? A. Yes.

Q. How many times in your life have you ever seen Frank Costello? A. My wife?

(326) Q. No. How many times during your life have you ever seen Frank Costello? A. Twice.

Q. And can you place the year? A. (No answer.)

Q. How long ago was it? A. Well, 20 years ago, 22, 23.

Q. At that time where did you meet him? A. Was walking by with his mother.

Q. And his mother stopped and introduced him? A. That is right.

Q. That was just on the street? A. Just on the street.

Q. Passing by, to say hello? A. That's right.

Q. And those are the only times you have ever seen him? A. That's right.

Q. Did you appear before the grand jury that returned the indictment in this case? Did you testify before a grand jury? A. No.

Mr. Fennelly: That is all.

Mr. Seymour: That is all.

(Witness excused.)

Mr. Christy: The Government calls Clarence Peattie.

Mr. MacMahon: Your Honor, may I have leave to substitute photostats for the exhibits—

(327) The Court: 98 through 101?

Mr. MacMahon: 98 through 101, your Honor?

The Court: Yes, surely.

Mr. MacMahon: (To witness Festa) Mr. Festa, I will give you your papers after court in just a few minutes. You go in the witness room.

Clarence Peattie—for Government—Direct

CLARENCE PEATTIE, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Christy:

Q. Mr. Peattie, where do you live? A. 7202 Astoria Boulevard, East Elmhurst, New York.

Q. Where do you work? A. St. Michael's Cemetery.

Q. Where is St. Michael's Cemetery, sir? A. That is on Astoria Boulevard at 72nd Street in East Elmhurst.

Q. How long have you worked at St. Michael's Cemetery? A. 12 years.

Q. What are your duties there? A. I am superintendent of the cemetery.

Q. Would you speak up a little, Mr. Peattie? A. I am superintendent of the cemetery.

Q. Mr. Peattie, when a person purchases a plot in the cemetery what is the first thing that is done (328) after they have selected the plot? A. Why, a sales order is made out.

Q. After the sales order is made out what is then done? A. Why, it is entered in the cash book.

Q. Mr. Peattie, have you brought with you a lot sale order and a cash receipts ledger dealing with a sale to Frank Costello? A. I have.

Q. May I have them, sir? A. (Witness hands papers to Mr. Christy.)

(Marked Government's Exhibit 103 for identification.)

Mr. Christy: Would you mark this?

(Marked Government's Exhibit 104.)

Q. Mr. Peattie, I show you Government's Exhibit 103 for identification and ask you if you will tell us what that is? A. That is a lot sales order.

Q. Will you speak up so that the jury can hear you? A. That is a lot sales order of the sale to Frank Costello, St. Michael's Cemetery.

Q. And is there a date on that? A. There is, November 15, 1948.

Q. I show you Government's Exhibit 104 for identification and ask you if you will tell us what that is? A. This is the cash book.

The Clerk: A cash book?

(329) The Witness: A sheet from the cash book involving this Frank Costello sale which is shown here.

Q. Mr. Peattie, this lot sale order which you have identified, is that a record kept in the regular course of St. Michael's Cemetery business? A. It is.

Q. Is it part of the business to keep such records? A. It is.

Q. And the sheets from the cash receipts book, which you have identified, are they records kept in the regular course of business? A. They are.

Q. Is it part of the business to keep such records? A. Surely.

Mr. Christy: Your Honor, I offer these in evidence.

Mr. Fennelly: No objection.

(Marked Government's Exhibits 103 and 104 in evidence.)

The Court: All right; we will take our recess now.

(Jury retires.)

(Short recess.)

Mr. Christy: Your Honor, before we continue with Mr. Peattie, may I ask that these photostats be substituted for the originals that Mr. Festa produced?

(330) The Court: Yes.

(Photostats substituted and marked Government's Exhibits 98, 99, 100 and 101 in evidence.)

By Mr. Christy:

Q. Mr. Peattie, I show you Government's Exhibit 103 in evidence and ask you if you will tell us the person to whom that was sold, that lot? A. Sold to Frank Costello.

Q. And what lot was it? A. On No. 14, Section 15.

Q. And what was the date of the sale? A. November 15, '48, 1948.

Q. And, Mr. Peattie, will you tell us the amount that was paid on that sale? A. $4,888.

Q. Now, was that figure entered on the cash receipts ledger? A. It was.

Q. And do you find that figure on there? A. Yes, sir.

Q. And that indicates that that sum of $4,888 has been paid? A. It does.

Q. And it is alongside the name of? A. Frank Costello.

The Court: So that the record will be clear, you are now reading from the sheet which is marked 104.

(331) Mr. Christy: Yes, your Honor.

I have no further questions.

Cross Examination by Mr. Fennelly:

Q. Did you testify before the grand jury that returned the indictment in this case? A. No, sir.

Q. "No, sir"? A. No, sir.

Q. And these records of your cemetery that you have produced here, they were not subpoenaed before the grand jury that returned the indictment in this case, were they? A. Not that I know of.

Q. Well, you would know, wouldn't you, if they were, sir? A. Yes, I would.

Q. And the records were not subpoenaed; isn't that correct? A. That is right.

Q. Now, were the payments made on this in one or two payments? A. One payment.

Q. And did you receive the payment? A. I, personally?

Q. Yes. A. No.

Q. Were you present in the office when it was paid? A. Yes, sir.

Q. And was it a man or woman who paid it? A. A woman.

Q. And did you know who the woman was? A. Well, they told me she was Mrs. Frank Costello. (332) I had never seen her before.

Q. Who is buried in this mausoleum in your cemetery? A. Some of the family; I don't recall their names.

Q. Well, isn't the mother and father of Mr. Frank Costello and the mother and father of Mrs. Frank Costello, the Geigermans, aren't they, the four of them, buried there? A. I couldn't say, without looking it up.

Q. Well, haven't you got records that show who was buried there? A. I have, yes.

Q. And haven't you any recollection of the fact that the mother and father of both Mr. and Mrs. Costello were buried there? A. No, I haven't.

Clarence Peattie—for Government—Redirect—Recross

Redirect Examination by Mr. Christy:

Q. Mr. Peattie, have you with you the records of who is buried in the mausoleum? A. Yes, I have.

Q. May I see them? A. (Witness hands to Mr. Christy.)

(Mr. Christy confers with Mr. MacMahon at the counsel table.)

Mr. Fennelly: I offer it in evidence. I haven't seen it.

(Mr. Christy hands to Mr. Fennelly.)

The Clerk: Defendant's Exhibit E—is there any objection?

(333) Defendant's Exhibit E received in evidence.

The Court: Is this E?

The Clerk: Yes, Judge. I will give it to you in just a moment.

(Defendant's Exhibit E received in evidence.)

Mr. Fennelly: And I am offering it, your Honor, only as to that part of it which shows the burials. There are some notations on the bottom of it I am not offering, in pencil.

The Court: Very well.

Recross Examination by Mr. Fennelly:

Q. Now, your record shows, Defendant's Exhibit E, will you tell us who is buried in that mausoleum? A. Louis Costello, Aloise—Sadie Aloise, Marie, Maria Costello, Cecelia Geigerman and Jacob H. Geigerman.

Q. Now, hadn't you told the Government attorneys that it was Mrs. Costello that had paid the $4,888, I think it is? A. Yes.

Q. I didn't hear you, sir. A. Yes, sir.

Mr. Fennelly: That is all.

Mr. MacMahon: (To Mr. Fennelly) May I see that?

(Mr. Fennelly hands Defendant's Exhibit E to Mr. MacMahon.)

(334) Mr. Christy: I have no further questions.

The Court: All right.

Mr. Christy: You are excused.

(Witness excused.)

Mr. Christy: Your Honor, may I have leave to have a photostat made of that last exhibit introduced by Mr. Fennelly and substitute it tomorrow?

The Court: Yes. Not tomorrow.

Mr. Christy: Monday.

The Court: Monday afternoon.

Mr. Christy: All right, sir.

The Government calls Kenneth Barnett.

KENNETH BARNETT, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Christy:

Q. Mr. Barnett, where do you live? A. 226 Royal Avenue, Mineola, New York.

Q. Where do you work, sir? A. St. Michael's Cemetery.

Q. How long have you been working there? A. About twelve and a half years.

Q. What are your duties at St. Michael's Cemetery? A. I am the office manager.

(335) Q. Mr. Barnett, do you know the defendant Frank Costello? A. Well, I have seen him, yes.

Q. Do you see him here in court?

(Defendant stands.)

A. Yes, sir.

Mr. Christy: May the record indicate, your Honor, that the witness has indicated Mr. Costello?

The Court: Yes.

Q. Where did you first see Mr. Costello, Mr. Barnett? A. In the office of the cemetery.

Q. That is, St. Michael's Cemetery? A. That is right.

Q. Do you remember approximately when that was? A. It was in 1948. About the middle of the year, I would say.

Q. What did Mr. Costello say to you, as nearly as you can remember? A. Well, he came in the office and he said that he was interested in buying a plot in St. Michael's. So we had one of our men go out on the grounds with him.

Q. Did Mr. Costello select a plot while he was there? A. Yes, sir.

Q. Did he make a deposit? A. No, sir.

Q. Mr. Barnett, I show you Government's Exhibit 103 in evidence, which records the sale of a plot to (336) Frank Costello, and ask you if you remember that sale? A. Yes, sir, I do.

Q. Did you receive the money for this sale? A. Yes, sir.

Q. From whom did you receive it? A. It was Mrs. Costello.

Q. The sum of money you received was how much? A. It was $4,888.

Q. How was this money paid, do you remember? A. It was cash, currency.

Q. Actual currency? A. Yes.

Mr. Christy: I have no further questions, your Honor.

Cross Examination by Mr. Fennelly:

Q. Did you appear before the—and testify before the—grand jury that returned this indictment? A. No, sir.

Mr. Fennelly: That is all.

(Witness excused.)

Mr. Christy: Your Honor, may I substitute photostats for Government's Exhibits 103 and 104?

The Court: You may.

Mr. Seymour: The Government calls Edmund J. O'Connor.

The Court: O'Connor? Not, O'Connell?

(337) Mr. Seymour: O'Connor.

EDMUND J. O'CONNOR, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Seymour:

Q. Mr. O'Connor, where do you live? A. 29 Jane Street, Roslyn, Long Island.

Q. What is your occupation? A. I am an auditor.

Q. By whom—. A. With the New York Trust Company.

Q. I beg your pardon? A. With the New York Trust Company.

Q. At what address? A. 100 Broadway.

Q. How long have you been employed by New York Trust Company? A. Over 25 years.

Q. Are you familiar with the books and records of the bank? A. I am.

Q. Can you tell us whether the books and records of your bank show any accounts in the name of Frank Costello or Loretta B. Costello during the period from 1937 through 1949? A. There was an account maintained with us in the name of Frank Costello Charities Fund, which was opened on June 17, 1949.

Q. You have produced certain records relating to (338) that account, Mr. O'Connor? A. I have.

Mr. Seymour: May I have them, please? Would you mark that, please?

(Marked Government's Exhibit 105 for identification.)

Q. Do I take it, Mr. O'Connor, that those ledgers are part of the records relating to that account? A. They are.

Q. May I have the appropriate bundle—both of them? A. Both of them.

Mr. Seymour: Would you mark these, please, Government's Exhibits 106-A for identification through 106-G for identification?

(Marked Government's Exhibit 106-A for identification through 106-G for identification, respectively.)

Q. Mr. O'Connor, I hand you Government's Exhibit 105 for identification, and you have before you several volumes with certain pages marked respectively Government's Ex-

hibits 106-A through 106-G for identification. Can you tell us, first, sir, as to 105 for identification what that document is? A. 105 is the signature card of the Frank Costello Charities Fund, indicating the signature of Frank Costello as the person authorized to draw on the account.

(339) Q. That Exhibit for identification has on its face, I believe, certain pencil notations. Can you tell us whether those notations were made at the time the account was opened or subsequently? A. Oh, they were made subsequent to the opening of the account.

Q. Will you look at Government's Exhibits 106-A through G for identification and tell us what those pages represent? A. They represent the ledger sheet of the Frank Costello Charities Fund account covering the period from June 1949 through December 1949.

Q. They appear to be—

The Court: What are those dates again?

The Witness: June 1949 through December of 1949.

The Court: Thank you.

Q. Mr. O'Connor, they appear to be carbon copies of some document. Can you tell us what they are made up from? A. Yes, under our system of bookkeeping, we have an original ledger sheet and—of which this is a carbon copy and remains as our ledger copy. The ledger sheet proper goes to the customer at the end of each month together with any supporting vouchers.

I have a copy of the form here, if you would care to see it.

(340) Q. Thank you very much, Mr. O'Connor, but we will concern ourselves with these two exhibits for the time being.

Can you tell us, Mr. O'Connor, whether Government's Exhibit 105 for identification and 106-A through 106-G for

identification are records kept by the bank in the regular course of business? A. They are.

Q. And is it the regular course of business of the bank to keep those records? A. It is.

Mr. Seymour: If your Honor please, at this time I offer a blocked-out photostat in substitution for Government's Exhibit 105 for identification with the items written in pencil which the witness has said weren't on the document at the time it was originally prepared blocked out.

I also offer Government's Exhibits 106-A through G for identification and ask leave at this time to substitute photostats of the respective pages, and permitting them to assume the exhibit number of 106 in replacement of the respective pages bound in the ledgers?

The Court: Very well.

(341) Mr. Seymour: Will you mark these?

(Marked Government's Exhibit 107 for identification.)

Mr. Fennelly: No objection to 105. That is the photostat.

The Court: It may be marked in evidence.

(Government's Exhibit 105 for identification received in evidence.)

Mr. Fennelly: There is no number on this, but I have no objection to it, whatever it may be.

Mr. Seymour: This is offered in substitution for 106, in lieu of the pages found in the volume. May it be received as 106, your Honor?

The Court: Yes.

The Clerk: Government's Exhibit 106 received in evidence in lieu of 106-A for identification through 106-G for identification.

Mr. Seymour: (To the witness) You may fold up your books.

Q. Now, Mr. O'Connor, I hand you Government's Exhibit 107 for identification. Can you tell us what those are? A. Those are the deposit tickets covering the deposits made to the account during the period June through December, 1949.

(342) Q. You are referring to the Frank Costello Charity Fund account? A. Frank Costello Charity Fund, that is correct.

Q. Are those deposit tickets records kept in the regular course of business of the bank? A. They are.

Q. And is it the regular course of business to keep those records? A. It is.

Mr. Seymour: I offer these in evidence.

Mr. Fennelly: No objection.

(Government's Exhibit 107 for identification received in evidence.)

Mr. Seymour: If your Honor please, I ask leave to substitute photostats at the close of Mr. Fennelly's examination.

The Court: You may do so.

Q. Now, Mr. O'Connor, I hand you Government's Exhibit 105, which I believe is the signature card for the account you referred to. Can you tell us when that account was opened? A. On June 17, 1949.

Q. Can you tell us what address is given for the account? A. 509 Madison Avenue, New York 22.

Q. I hand you Government's Exhibit 106 in evidence. Can you tell us what address is given for the account (343) there? A. 509 Madison Avenue, New York 22.

Q. Can you tell us from Government's Exhibit 106, Mr. O'Connor, the balance on deposit in that account as of December 31, 1949? A. As of December 31, 1949, there was a balance of $916.73.

Q. Mr. O'Connor, I hand you Government's Exhibit 107. Did I understand you to say before that those are the deposit tickets for all the deposits shown on Government's Exhibit 106? A. That is correct.

Q. Can you tell us the total amount of those deposits? A. $3,521.73.

Q. These are deposits made between the opening of the account in June '49 until the end of December, 1949? A. That is correct.

Q. Can you tell me, sir, what portion of the total deposits of $3,521.73 was made in currency? A. $3,500.

Q. Leaving how much deposited by check? A. $21.73.

Q. Can you tell me the date of that deposit, sir? A. $21.73, July 18, 1949.

Mr. Seymour: If your Honor please, I ask leave at this time to read one entry from Government's (344) Exhibit 90-C in evidence, being the transcript by the Chemical Bank and Trust Company of the account of Frank Costello Special, Charity Fund Account.

The Court: Yes, you may.

Mr. Seymour: The final entry on that exhibit shows a withdrawal of $21.73 cleared through the account under date of July 19, 1949.

Would you mark this for identification, please?

(Marked Government's Exhibit 108 for identification.)

Q. Mr. O'Connor, I hand you Government's Exhibit 108 for identification. Can you tell us what that is, sir? A. Yes. That is an internal record kept of a customer's checks for accounts. In other words, when a customer opens an account and we make up a special check book, this is the type of record we keep.

Q. Can you tell us to what account that particular record relates? A. Frank Costello Charities Fund.

Q. Does that record contain any entries relating to any transaction prior to the end of December, 1949? A. Yes. It indicates that we—

Q. Stop right there, Mr. O'Connor. A. Okay.

Q. The "yes" is sufficient at this time. Does it also show a transaction after the end of (345) 1949? A. That is correct.

Q. At the bottom of that exhibit, Mr. O'Connor, is there a sample of a check? A. There is.

Q. Can you tell us to which transaction, the earlier or the later transaction, that sample actually relates? A. That refers to the later transaction.

Q. Do you know what happened to the sample that related to the earlier transaction? A. Well, the account was originally opened at our Rockefeller Center office pending the opening of our 7th Avenue office; it was to be a 7th Avenue office account. And we issued a check book of checks on the Rockefeller Center office until such time as the 7th Avenue office opened, and this is—

Q. My question was, what happened to the sample for the original order for the check book? A. Of course that became obsolete when the new check book was delivered.

The Court: Was it filed away or destroyed—

The Witness: Destroyed.

The Court: —or what happened?

The Witness: It was destroyed, removed, and the new one substituted in its place.

The Court: Very well.

Q. Now, sir, are you familiar with the microfilm (346) records of your bank? A. Yes, I am.

Q. And have you yourself studied those records to familiarize yourself with the appearance of checks drawn on the account of Frank Costello Charities' Fund during the year 1949? A. Yes, I looked at some of them.

Q. Can you tell us, sir, whether the sample check appearing on that exhibit which you have in your hand is the same as the appearance of those films you have seen on microfilm, with the exception of the designation of the particular branch of your bank? A. That is correct.

Q. May I have the exhibit, sir? A. (Witness hands to Mr. Seymour).

Mr. Seymour: If your Honor please, at this time the Government offers Exhibit 108 for identification in evidence, excluding the entries relating to any transaction subsequent to December 31, 1949.

Mr. Fennelly: No objection.

(Government's Exhibit 108 for identification received in evidence.)

Q. Mr. O'Connor, I hand you Government's Exhibit 108. Could you tell us, sir, whether any order was placed for checks to be printed during 1949? A. That is correct; there was an order received (347) by us on June 21, 1949, for a book of checks on the Frank Costello Charities Fund.

Q. Can you tell us how many checks were ordered? A. Yes. There was one book of 300 checks.

Q. May I have the exhibit, please?

(Witness hands to Mr. Seymour.)

Mr. Seymour: If your Honor please, we would like to have the jury see this specially printed check. In view of the lateness of the hour, may I just quickly display it to them rather than circulating it?

The Court: Oh, yes.

(Mr. Seymour displays check to jury.)

Q. Mr. O'Connor, are you familiar with the books and records of your bank relating to the making of loans to individuals by the bank? A. Yes.

Q. Can you tell us whether the books and records of your bank show any loan having been made to Frank Costello or Loretta B. Costello between the years 1937 and the end of 1949? A. Our records indicate that no loans were made in either of those names during that period.

Mr. Seymour: I have no further questions.

Mr. Fennelly: Could I look at the card opening that account, please?

Mr. Seymour: I believe the witness has it.

(348) *Cross Examination by Mr. Fennelly:*

Mr. Fennelly: What number is this?

Mr. Seymour: The photostat has been offered in lieu thereof, so it can be blocked out. I believe it is 105.

The Court: 105.

Q. I show you Government's Exhibit 105, which is the signature card on the Frank Costello Charities Fund. What is the nature of Mr. Costello's business stated on that card? A. Investments.

Q. I believe you testified you have Recordak films which

would show the checks drawn on the account? A. That is correct.

Q. Pictures of them? A. Pictures of the face of the checks. We picture the face of the check.

Q. Have you got those with you? A. No, I don't have them with me.

Q. You have examined them, haven't you? A. I have looked at some of them.

Q. Did you see one on or about September 23, 1949, to the United Jewish Appeal—

Mr. Seymour: I object.

Q. —for $250?

Mr. Seymour: I object.

The Court: Sustained.

(349) Mr. Seymour: I move that it be stricken from the record.

The Court: No, it will not be stricken. He has given no testimony on direct examination with respect to that.

Mr. Fennelly: He has testified he has examined them, your Honor.

The Court: Yes, he did. That was no part of his direct examination. You asked that on cross examination.

If you desire to put in any evidence with respect to the bank records, you may do so at the appropriate time, but you may not do it now on cross examination.

Q. Did you appear before the —testify before the Grand Jury that returned the indictment in this case? A. I did not.

Q. Did your bank produce the records before the Grand Jury that you have produced here today?

Mr. Seymour: If you know, I submit, your Honor.

A. Not that I know of: Not that I know of.

Q. You would know, wouldn't you? A. I should know, yes, because most of this stuff clears through me and—

Q. And isn't it a fact that to your knowledge they (350) were not produced before the Grand Jury? A. That is correct. That is correct.

Mr. Fennelly: That is all.

The Court: Very well.

You may start getting the books together. Take your time because we will probably all be out of here, because we are now going to adjourn until 1 o'clock on Monday afternoon.

Ladies and gentlemen, remember the instructions, now, over the weekend: don't talk about the case among yourselves and certainly not with anybody else, and keep your minds completely open until all the evidence is in and the case is submitted to you, if it is, under the Court's instructions.

(Adjourned to Monday, April 12, 1954, at 1 p.m.)

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(351) New York, April 12, 1954, 1 p.m.

(Trial resumed.)

(Jury present.)

The Clerk: If there are any witnesses present in the court room; they will please retire to the witness room.

Mr. MacMahon: Your Honor, may I ask leave at this time to have Mr. Albert Sohn and Mr. Claude Dannemann, who are agents of the Internal Revenue Bureau with me; and they may be witnesses later in this trial, but they are familiar with the books and records to be offered this afternoon.

The Court: They may be here.

Mr. MacMahon: The Government calls Charles B. Murphy.

CHARLES B. MURPHY, called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination by Mr. MacMahon:

Q. Where do you live, Mr. Murphy? (352) A. New Orleans, Louisiana.

Q. Will you speak up so that— A. New Orleans, Louisiana.

Q. —all can hear you. What is your profession? A. Certified public accountant.

Q. How long have you been engaged in that profession? A. I think I have had my certificate since '31.

Q. Are you here under subpoena? A. I am.

Q. At one time did you have custody of the books of the Bayou Novelty Company? A. I did.

Q. Have you attempted to ascertain their location at this time? A. I have. I have made a diligent search for them and been unable to locate them.

Q. At one time did you have custody of the Pelican Novelty Company books? A. I did.

Q. About when was that? A. That came the first part of—around the first part of 1940.

Q. Did you do any accounting work with respect to the Pelican Novelty Company? A. Yes. When the Pelican Novelty books came over to me the company was just about finished. I closed the books out for March 31, 1940, and also for the short period ending December 31, 1940.

Q. What did those books show with respect to assets and liabilities? A. Since I have been here (353) I have seen a stipulation in a Tax Court case. The books show liabilities and deficits in the partners' account.

Q. So that at the end of the business there were deficits in the capital account? A. That is right.

Q. Who retained you to close out the Pelican books? A. Mr. Kastel.

(Marked Government's Exhibits 109, 110 and 111 for identification, respectively.)

Mr. MacMahon: Your Honor, at this time the Government offers a certified copy of the income tax return of the Pelican Novelty Company for the fiscal year ended March 31, 1939, which is marked as Government's Exhibit 109 for identification.

Mr. Fennelly: I object to it as irrelevant, immaterial.

The Court: Overruled.

(Marked Government's Exhibit 109 in evidence.)

Q. Mr. Murphy, I show you Government's Exhibit 110 for identification and ask you to tell me what that is? A. This is a partnership return of Philip Kastel for the year 1939.

Q. And Exhibit 111 for identification? A. Is the partnership return of Philip Kastel for the year 1940.

(354) Q. Mr. Murphy, I show you Government's Exhibit 109 in evidence, and ask you if you will state what

the income shown on that return is. A. I, frankly, cannot see these figures.

Q. Would you just state what the profit to Mr. Kastel shown on that return is? Perhaps we could get you a little better light. A. I believe it looks like 5,459.90, but

The Court: What was that figure, Mr. Witness?

The Witness: 5,459.90, is what it looks like, your Honor.

The Court: May I see it, please?

(Witness hands paper to Court.)

Q. Referring to Exhibit 110 for identification, is that a retained copy of a tax return? A. That is the retained copy.

Q. One that you prepared? A. That is right.

Q. Retained copy of Phil Kastel partnership return? A. Partnership.

Q. For what year? A. 1939.

Mr. MacMahon: At this time the Government offers Exhibit 110 in evidence.

Mr. Fennelly: I think there is no foundation for this. The Government should produce the original return. A further objection on the ground that it is (355) irrelevant and immaterial.

The Court: Do you want to explore the foundation of it, Mr. MacMahon?

Mr. MacMahon: Your Honor, I would like to offer it at this time subject to a certificate that the original has been destroyed.

The Court: Your represent that such a certificate will be forthcoming?

Mr. MacMahon: I represent that such a certificate will be forthcoming, your Honor.

The Court: Very well.

By the Court:

Q. Was there an original that you made of which this Exhibit 110 is a copy, Mr. Witness? A. No, that is my original retained copy.

Q. Yes, but from that there was another one made that was filed? A. Yes.

Q. Did you file it? A. Yes, sir.

Q. This is a copy you made yourself? A. Yes, sir.

Q. And a copy that was filed with the Government was a true and correct copy of this, or this is a true and correct copy of what was filed? A. To the best of my knowledge and belief it is the same return.

Q. Very well. You prepared this? A. Yes, sir.

(356) The Court: Very well.

The Clerk: Government's Exhibit 110 for identification—

The Court: Just a minute.

The objection is overruled. I will accept it, on the Government's representation that there will be a certificate that the other is not available, the original is not available.

(Government's Exhibit 110 for identification received in evidence.)

By Mr. MacMahon:

Q. Now, Mr. Murphy, would you refer to Government's Exhibit 110 in evidence—

The Court: Pardon me. May I see 109? It is here. Thank you very much. Go ahead.

Q. (Continuing) —and read from that, if you would, the total income for the Phil Kastel partnership for the calendar year 1939. A. $5,459.90.

Q. And would you also read what the share of that income for Frank Costello was? A. $2,729.95.

Q. I show you—

The Court: What is that last figure, please?

The Witness: $2,729.95.

Q. I show you Government's Exhibit 111 for identification and ask you to tell me what it is. A. That is a typed copy of the 1940 partnership return of Philip Kastel.

(357)

Q. Is that a retained copy that you prepared? A. Yes, sir.

Q. And did you file the original of that income tax return? A. Yes, sir.

Mr. MacMahon: I offer it, your Honor, subject to the same representation that the Government will furnish—

The Court: Very well.

Mr. Fennelly: The same objection.

The Court: Objection overruled. It may be received in evidence.

Mr. Fennelly: May I see the exhibit first?

The Court: You made your objection without seeing it, so I thought probably you didn't want to bother, but I will withdraw the ruling until you have had a chance to look at it and, if you wish, make any additional objection.

Mr. Fennelly: No, it is the same objection, your Honor, only on my theory that—

The Court: Do you want to make a note from it?

Mr. Fennelly: No additional objection. My same objection, to the theory of the case.

(358) The Court: Very well.

Mr. MacMahon: Any further objection?

Mr. Fennelly: No other objection, other than I stated.

The Court: Very well. The objections are overruled and it may be received in evidence.

(Government's Exhibit 111 for identification received in evidence.)

Q. Now, referring, Mr. Murphy, to Government's Exhibit 111, would you state the amount of income shown on that return? A. $4,576.96.

Q. And what was the source of that income as stated on the return? A. The source was from Pelican Novelty Company, fiscal year ended March 31, 1940, profit of $9,210.05; Pelican Novelty Company final return from 4-1-40 to 12-31-40, loss of $4,633.09, making a net of $4,576.96.

Q. What was Mr. Costello's share of the income shown on the Pelican return? A. $2,288.48.

Q. Now, you at one time were retained to do accounting work for Crescent Music Company? A. Yes.

Q. When was that? A. Oh, that was sometime in the latter part of July '43 or the first part of August '43; I think the latter part of July '43.

Q. Who retained you? A. Mr. Jack Joffe.

(359) Q. Who introduced Mr. Jack Joffe to you? A. Mr. Kastel.

Q. What legal entity was Crescent Music Company? A. The Crescent Music Company organized as of that date was a partnership.

Q. As shown on the books who were the partners?

Mr. Fennelly: Just a minute. I object to this as hearsay.

The Court: You handled their business and did their accounting?

The Witness: Yes, sir.

The Court: Very well. Overruled.

Q. Would you answer the question, Mr. Murphy? A. Mr. Jack Joffee, Mrs. Jennie Eisenberg, and Mrs. Loretta Costello.

Q. And what were their respective interests? A. One-third each.

Q. One-third each? A. One-third each.

Q. Did the partnership remain the same? A. No. The partnership, September 15th, I think, September 15th, '44, in September, 1944, Mr. Philip Kastel bought out the partnership of Joffe, Eisenberg and Mrs. Costello, and on the same date he sold a half interest to Mrs. Costello.

Q. Now, are there any cash transfers shown on the (360) books with respect to that? A. No, sir.

Q. What was your answer? A. No, sir.

Mr. Fennelly: Objection, your Honor. It is hearsay.

The Court: Yes, that last part is, certainly.

Mr. MacMahon: (To an associate) May we have the books?

The Court: Are there books in existence?

Mr. MacMahon: Yes. They are coming in. This is just preliminary.

The Court: All right. But if you are going to have any testimony as to what the books reflect you had better have the books in, or at least have the witness testify from the books.

Q. Mr. Murphy, did you receive a subpoena duces tecum calling for the production of the books and records of the

Crescent Music Company and the Crescent Music Company, Inc.? A. I did.

Q. And you are familiar with those books and records? A. Yes, sir.

Mr. MacMahon: Would you mark this, please?

(Marked Government's Exhibit 112 for identification.)

Q. Mr. Murphy, I show you Government's Exhibit 112 for identification and ask you to identify it. (361) A. That shows the cash receipts from July 30, 1943, to September 15, 1944. It shows cash disbursements from August 5, 1943—cash disbursements through September 15, 1944.

Q. Of what book of account? A. These cash disbursements.

Q. What company? A. Crescent Music Company.

The Clerk: How do you spell that, please?

The Witness: C-r-e-s-c-e-n-t.

The Clerk: Thank you.

A. (Continuing) It also shows the journal from July 23, 1943, to September 15, 1944.

Q. Also of the Crescent Music Company? A. Of the Crescent Music Company.

(Marked Government's Exhibit 113 for identification.)

Q. I show you Government's Exhibit 113 for identification, Mr. Murphy, and ask you to identify that. A. This is the general ledger.

Q. Of what company? A. Of Crescent Music Company.

Q. Covering what period? A. July 30, 1943, through September 15, 1944.

The Court: What were those dates again?

The Witness: July, 1943, through September 15, 1944.

The Court: Thank you.

(362) (Marked Government's Exhibit 114 for identification.)

Q. I show you Government's Exhibit 114 for identification and ask you to identify it, Mr. Murphy. A. That shows the cash receipts, one section, from—of Crescent Music Company partnership and also the Crescent Music Company corporation from September 20th—partnership from September 28, 1944, to August 17, 1948.

It also shows the cash disbursements of the Crescent Music Company partnership and Crescent Music Company, Inc. from September, 1944, September 28th, the first entry, through August 31, 1948.

It also has the general journal of the Crescent Music partnership and the Crescent Music corporation from September 15, 1944, through August 31, 1948.

(Marked Government's Exhibit 115 for identification.)

Q. I show you Government's Exhibit 115 for identification. Would you identify it, please? A. This is the general ledger and accounts receivable of the Crescent Music Company partnership which began September 15, 1944, also the general ledger for the corporation, which ended August 1948.

(Marked Government's Exhibits 116 through 129 for identification, respectively.)

(363) Q. Mr. Murphy, I show you Government's Exhibit 116 for identification and ask you to tell me what it is. A. Those are my working paper file, Crescent Music Company partnership, ending September 15, '44.

Q. I show you Government's Exhibit 120 and ask you to state what they are.

The Court: 120?

Mr. MacMahon: Yes, your Honor.

A. This is Crescent Music, Inc., my work file for the fiscal year ending August 31, '48.

Q. And Government's Exhibit 119 for identification? A. This is Crescent Music partnership file, my working paper file for August 31, 1947.

Q. And Government's Exhibit 117 for identification, state what that is. A. This is Crescent Music file, my working paper file, marked fiscal year ended August 31, '45.

Q. I show you Government's Exhibit 118 for identification. A. These are my work paper files, marked Crescent Music Company fiscal year ending August 31, '46.

The Court: And 116 was for what year?

The Witness: That is marked fiscal year ending August 31, '47.

The Court: No. 116. That was 119.

(364) The Witness: 116? This is Crescent Music Company file, first partnership, from July, 1943, to September 15, '44.

(Marked Government's Exhibit 121 for identification.)

Q. I show you Government's Exhibit 121 for identification and ask you to identify it. A. That is the minute book of the Crescent Music Company, Inc.

Q. For what period? A. From the corporation—date of incorporation, 28th day, month of August, in the year 1947.

Q. To what date? A. Well, that is—no minutes in it after September 1, '47.

Q. Mr. Murphy, I ask you whether, with respect to the sale which you testified took place on September 15, 1944, whether there are any cash transfers shown in the books.

Mr. Fennelly: May we have what company he is referring to?

Mr. MacMahon: Crescent Music Company.

A. Journal 7—

Mr. Fennelly: I object to any testimony about Crescent, your Honor. Mr. Costello had no connection whatsoever with the company.

(365) The Court: This is the partnership in which the witness has testified, Mr. Costello had one-third interest?

Mr. MacMahon: Yes, your Honor, as per the books.

The Court: Very well. Overruled.

Mr. MacMahon: Will you repeat the question, please?

(Question read.)

A. The general journal, page 7, shows an entry on September 15, 1944, debit to the vendee, debit to accounts receivable, credit to the Auto Truck—auto and truck, credit to machines and boxes, credit to furniture, fixtures, and credit to meter deposit. It says "To close sale of business 9 15 44." On the same page there is a debit to the capital account of $55—

Mr. Fennelly: These are not in evidence and they are being read, apparently. I thought the witness was testifying from recollection.

Mr. MacMahon: I think I want to clutter the record. The books are available if Mr. Fennelly wants to examine from them.

The Court: Are you able to testify without referring to these books?

The Witness: No, sir.

(366) The Court: These are books you had worked on during the period you told us about?

The Witness: Either me or my office, yes, sir.

Q. You may proceed. Will your answer my question? Do they show any cash transfer with respect to this sale? A. I am endeavoring to answer. Journal 7, we close out the capital account by debit of $55,900 and a debit to the various loans account, and a credit to the vendee. There is no cash in this journal entry. The debit and credit close it out.

Q. What was the business of Crescent Music Company? A. Operated music boxes, playing records.

Q. Is that what we commonly call a juke box? A. It is what I would call a juke box.

Q. Where were those juke boxes maintained?

Mr. Fennelly: I object to it as immaterial.

The Court: Overruled.

A. I don't quite follow you.

Q. Where were they kept, in the operation of—

The Court: Tell us how the Crescent Company did its business, consisting—

The Witness: To the best of my recollection—

The Court: —of dealings in juke boxes.

The Witness: To the best of my recollection the

juke boxes were placed at various locations, (367) restaurants and bars.

Q. Rented out? A. They were placed in there and the company got a percentage of the profits and the owner of the business got a percentage of receipts, rather.

Q. Did there come a time when Crescent Music was incorporated? A. Yes, sir.

Q. When was that, Mr. Murphy? A. In the minute book is a copy of the charter. It states on the 28th day of the month of August, in the year One Thousand Nine Hundred and Forty-Seven.

There is also a typed copy which says, "I the undersigned recorder of mortgages in and for the Parish of New Orleans, State of Louisiana, do hereby certify that the above and foregoing charter of the Crescent Music Company, Inc. was this day duly recorded in my office in Book 1,731, Folio 16"—

The Court: Just a minute.

Mr. Fennelly: I object.

The Court: We cannot go on this way.

Mr. MacMahon: No.

Q. Would you just answer the question?

The Court: You are either going to put the books in or you are going to have to lay a better foundation for it.

(368) Mr. MacMahon: All right, your Honor. I will offer the books at this time.

The Court: If all you are trying to prove is when the corporation was organized, all you need to do is offer the certificate, if you have a certified copy, or, if the witness knows of his own knowledge, he may testify; from any aided recollection, he may tell us.

Q. Just when, Mr. Murphy, refreshing your recollection without reading it all into the record?

The Court: All we are looking for now—

Mr. MacMahon: Is a date.

The Court: —is a date.

The Witness: Certificate from the Secretary of State of Louisiana states that on the 28th day of August—

Mr. Fennelly: No.

Q. No, don't read it. A. August 28, 1947.

Q. Just read the date. A. August 28, 1947.

Q. All right; thank you. Who were the stockholders of Crescent Music Company, Inc.? A. The opening entry shows Mrs. Costello with 220 shares—

Mr. Fennelly: May I object to reading the books? They are not in evidence.

(369) The Court: It is perfectly obvious that the witness, as he has said before, is unable to testify without refreshing his recollection. He persists in quoting the books and I am not going to spend the rest of the time arguing about it.

Mr. Witness, if you will, when you are asked a question, if you will please look at that book and give us the answer. When you were asked who are the stockholders, that is just a list of names.

Do you have any item there that refreshes you on that?

Q. Would you refresh your recollection from the item in the book? A. Philip Kastel, Mrs. Loretta Costello and George McQueen.

Q. How many shares did Mrs. Costello— A. 220 shares.

Q. How many, Philip Kastel? A. 220 shares.

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Q. And how many, Mr. McQueen? A. 110 shares.

Q. Did you hold any position with the Crescent Music Company, Inc.? A. I was the assistant—one of the assistant secretary-treasurer.

Q. Did Crescent have a bank account? A. Yes.

The Court: Pardon me just a minute.

Is the gentleman standing against the rear of the room a spectator?

(370) The gentleman who just squatted there, I would much prefer if you would come and take one of the seats available to spectators and not stand.

Thank you.

You may proceed.

Mr. MacMahon: Would you repeat the last question?

(Question and answer read.)

Q. Were you authorized to sign checks— A. I was—

Q. —of that company? A. —authorized to sign checks of the partnership, beginning September 15, 1944, and also the corporation's bank account, but I don't think I had it on the previous partnership.

Mr. MacMahon: Mark these.

The Court: In other words, from September, 1944, on to the end of the venture you had authority to sign checks?

The Witness: That is right.

(Marked Government's Exhibit 122 A for identification.)

Mr. MacMahon: Would you mark this B, just the stub?

(Marked Government's Exhibit 122-B for identification.)

(Marked Government's Exhibits 122-C through 122-G for identification, respectively.)

(370a) Q. Mr. Murphy, I show you Government's Exhibits 122-A through G, and ask you if you identify them, please. (371) A. These represent drawings by Mrs. Costello from January '46—

The Court: Just a minute. First of all tell us what 121-A is. Is that the book?

Mr. MacMahon: Yes, 122-A.

Q. Would you tell us what 122-A is?

The Court: 122-A, tell us what that is.

Q. What does—

The Court: No, that is that checkbook over on your left there.

Mr. MacMahon: No. A is the check.

Mr. Fennelly: Will your Honor strike out his statement as to what they were? He made a preliminary answer, partial answer. Would your Honor strike it out?

The Court: All right.

Now, 122-A appears to be a check drawn on some account.

The Witness: 122-A is a canceled check drawn on Crescent Music Company to the order of Mrs. Loretta B. Costello.

Mr. Fennelly: I object to that.

The Court: Strike that part. That is our fault. It is a check drawn on this—

(372) The Witness: Crescent Music Company.

The Court: Crescent Music Company. And who signed it?

The Witness: I signed it.

The Court: What is the date of it?

The Witness: July 6, 1946.

The Court: Very well. Now, will you go on and give us those details with respect to the other checks?

The Witness: 122-B is a checkstub of Crescent Music Company on the American Bank, showing a check to Mrs.—

The Court: A check drawn to somebody, on what date, in what amount?

The Witness: To Mrs. Loretta Costello on February 10th—

Mr. Fennelly: I object. And I ask your Honor to strike it.

The Court: Will you tell us—

Mr. Fennelly: He is—

The Court: Wait. Try at this time not to give us the name of the payee.

The Witness: This check—

The Court: Counsel is objecting to that, as he has a right to. We will get now merely those details (373) which are at this time neutral. Just tell us the check, the amount of it, and on what account it is drawn and the date.

The Witness: It is checkstub No. 1040, amount of $2,000, drawn February 10, 1946 on the Crescent Music Company's account.

The Court: Very well.

Q. Now, 122-C, please, Mr. Murphy. A. 122-C is a canceled check dated June 4, 1946 in the amount of $1,500 drawn on the Crescent Music Company.

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D is a canceled check dated May 7, 1946 in the amount of $1,500, drawn on the Crescent Music Company account.

E is a canceled check dated April 6, 1946 in the amount of $1,500, drawn on Crescent Music account.

F is a canceled check dated March 8, 1947 in the amount of $1,500, drawn on the Crescent Music account.

This (indicating) apparently came off.

Mr. MacMahon: (To the Clerk) Will you staple that?

A. That is a canceled check.

Q. Referring to what number? A. 122-G, canceled check dated January 11, 1946 in the amount of $2,000, (374) drawn on Crescent Music Company.

Mr. MacMahon: At this time, your Honor, the Government offers Exhibits 122-A through G., And I ask leave to substitute photostats.

The Court: Yes, after the conclusion of the cross examination.

Mr. Fennelly: I object to them as being irrelevant and immaterial.

The Court: I don't hear you, Mr. Fennelly.

Mr. Fennelly: I object to them as being irrelevant and immaterial.

The Court: Overruled.

(Government's Exhibits 122-A through 122-G for identification received in evidence.)

Q. Mr. Murphy, would you refer to Government's Exhibits 122-A through G in evidence and to the general ledger of Crescent Music Company and tell me what those checks A through G were for? A. Would you repeat that, please?